

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

WESTERN VALUES PROJECT  
704C East 13th Street, Suite 568  
Whitefish, MT 59937

Plaintiff,

v.

Case No. 1:19-cv-02789

UNITED STATES DEPARTMENT OF THE  
INTERIOR,  
1849 C Street NW  
Washington, DC 20240

UNITED STATES BUREAU OF LAND  
MANAGEMENT,  
1849 C Street NW, Rm 5665  
Washington, DC 20240

GENERAL SERVICES  
ADMINISTRATION,  
1800 F Street NW  
Washington, DC 20405

OFFICE OF MANAGEMENT AND  
BUDGET,  
725 17th Street NW  
Washington, DC 20503

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, as well as agency FOIA regulations, 5 C.F.R. §§ 1303.1 *et seq.*, 41 C.F.R. § 51-8.1 *et seq.*, and 43 C.F.R. §§ 2.1 *et seq.*, challenging the failure of the defendants to fulfill the requests for information made by plaintiff Western Values Project.

2. Plaintiff seeks declaratory relief that defendants are in violation of the FOIA for failing to fulfill plaintiff's requests for records, and injunctive relief that defendants immediately and fully comply with plaintiff's requests under the FOIA.

### **JURISDICTION AND VENUE**

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 702, which gives the Court jurisdiction over agency actions where an aggrieved party has suffered a wrong within the meaning of a "relevant statute," here the FOIA. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this District under 5 U.S.C. § 703, 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

4. Plaintiff Western Values Project is a public interest organization that gives voice to Western values in the national conversation about energy development and public lands conservation. Western Values Project uses the information it gathers, and its analysis of that information, to educate the public through reports, press releases or other media. Western Values Project also makes the material it gathers available on its public website.

5. Defendant United States Department of the Interior ("Interior") is an agency within the meaning of 5 U.S.C. § 552(f)(1).

6. Defendant Bureau of Land Management ("BLM"), a component of Interior, is also an agency within the meaning of 5 U.S.C. § 552(f)(1).

7. Defendant General Services Administration ("GSA") is an agency within the meaning of 5 U.S.C. § 552(f)(1).

8. Defendant Office of Management and Budget ("OMB") is an agency within the meaning of 5 U.S.C. § 552(f)(1).

9. Defendants are the agencies with possession and control of the records responsive to plaintiff's requests and are responsible for fulfilling the FOIA requests of plaintiff.

## **STATUTORY FRAMEWORK**

### **The Freedom of Information Act**

10. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

11. An agency must respond to a party making a FOIA request within 20 working days, notifying that party of at least the agency's determination whether or not to fulfill the request, and of the requester's right to appeal the agency's determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(i).

12. In "unusual circumstances," an agency may delay its response to a FOIA request but must provide notice and must also provide "the date on which a determination is expected to be dispatched." 5 U.S.C. § 552(a)(6)(B).

13. This Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

14. The FOIA provides a mechanism for disciplinary action against agency officials who have acted inappropriately in withholding records. Specifically, when requiring the release of improperly withheld records, if the court makes a written finding that "the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously," a disciplinary investigation is triggered. 5 U.S.C. § 552(a)(4)(F).

## **FACTS GIVING RISE TO PLAINTIFF'S CLAIMS FOR RELIEF**

15. On July 16, 2019, the U.S. Department of the Interior sent a letter to Senator Lisa Murkowski, Chair of the Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies announcing that the Bureau of Land Management would be moving its headquarters to Grand Junction, Colorado.

16. The BLM relocation has stirred controversy and garnered press attention. Although agency officials have stated that the move was designed to bring BLM employees closer to the public, some have questioned that rationale because over 90% of BLM employees work outside of Washington, D.C. *See, e.g., Daniel Victor, Bureau of Land Management Headquarters to Move to Colorado, Senator Says*, N.Y. Times, July 15, 2019, <https://www.nytimes.com/2019/07/15/us/politics/bureau-land-management-colorado.html>. Moreover, at least one high-ranking government official has suggested that relocating employees is a way to induce employees to quit, remarking that it is a “wonderful way to sort of streamline government.” *See, e.g., Ben Guarino, USDA Science Agencies’ Relocation May Have Violated Law, Inspector General Report Says*, Wash. Post, Aug. 6, 2019, <https://www.washingtonpost.com/science/2019/08/05/usda-science-agencies-relocation-may-have-violated-law-inspector-general-report-says/>.

### **Plaintiff’s FOIA Requests**

#### **The Request to Interior for a List of Relocated Positions**

17. On August 1, 2019, plaintiff submitted by email a FOIA request to the Department of the Interior (attached hereto as Exhibit 1) seeking “a copy of any final document sent to a Senate committee and/or to the General Services Administration listing all Bureau of Land Management positions and/or titles that the Department of Interior is planning to relocate.”

The request specified that plaintiff sought “whatever final document was produced closest to July 23, 2019, showing the details of the following transfers of positions and/or titles:

- Twenty-seven (27) positions relocating to Grand Junction, including the director, deputy director and their attendant staff.
- Two hundred twenty-two employees moving to BLM state offices.
- Eighty-five (85) employees relocating to Colorado; 54 positions will be divided between the state office and the National Operations Center in Lakewood and 4 additional positions go to the state office.
- Seventy-four (74) positions reallocated to state offices and report to state directors.
- Sixty-one (61) employees remaining in Washington D.C. at the headquarters of the Department of Interior.”

18. Plaintiff sought a fee waiver, explaining that the request was made in the public interest because it would contribute to a better understanding of the operations of the federal government. Plaintiff also explained that its request for records is “primarily and fundamentally for non-commercial purposes,” as it is a 501(c)(3) nonprofit organization with no financial interest in the records and will use them to inform the public.

19. Interior acknowledged receipt of the request by letter on August 8, 2019. A copy of this letter is attached as Exhibit 2. The agency stated that it was taking a “10-workday extension” under 43 C.F.R. § 2.19 to process the request, and that it would place the request on the “normal” processing track.

20. As of the date of the filing of this Complaint, plaintiff has received no further communications from Interior concerning this request.

### **Two Requests to Interior for Correspondence**

21. On August 1, 2019, plaintiff submitted by email two additional FOIA requests to the Department of the Interior seeking correspondence and communications relating to the BLM relocation. Specifically, plaintiff submitted:

- a. A request (attached hereto as Exhibit 3) seeking “all correspondence between any Department of Interior officials in the Immediate Office of the Secretary, Office of the Deputy Secretary, Office of Congressional & Legislative Affairs, Office of Intergovernmental and External Affairs, Office of Communications, Office of the Solicitor, Office of Assistant Secretary of Land and Minerals Management or Office of Policy, Management and Budget, and any official at the General Services Administrations (including, but not limited to, all email communications with accounts @gsa.gov), related to the relocation of the headquarters of the Bureau of Land Management to Grand Junction, sent since June 1, 2018.”
- b. A request (attached hereto as Exhibit 4) seeking “all correspondence between any Department of Interior officials in the Immediate Office of the Secretary, Office of the Deputy Secretary, Office of Congressional & Legislative Affairs, Office of Intergovernmental and External Affairs, Office of Communications, Office of the Solicitor, Office of Assistant Secretary of Land and Minerals Management or Office of Policy, Management and Budget, and any individual working in or representing the Washington D.C. or Colorado offices of Senator Cory Gardner, Senator Michael Bennet, or Representative Scott Tipton – including Sen. Gardner, Sen. Bennet, and Rep. Tipton themselves – related to the relocation of the headquarters of Bureau of Land Management, sent since June 1, 2018.”

22. Plaintiff sought a fee waiver in each of these requests as well.

23. Interior acknowledged receipt of these requests by letter on August 8, 2019. A copy of this letter is attached as Exhibit 5. The agency stated that it was taking a “10-workday extension” under 42 C.F.R. § 219 to process the requests, and that it would assign them to the “normal” processing track.

24. As of the date of the filing of this Complaint, plaintiff has received no further communications from Interior concerning either of these requests.

### **The Request to BLM**

25. On August 1, 2019, plaintiff submitted by email a FOIA request to the BLM (attached hereto as Exhibit 6) seeking “copies of all correspondence between William Perry Pendley, Michael Nedd, Kathleen Benedetto, Brian Steed, Tom Baptiste, Amanda Kaster, Mitchell Leverette, or Evan Wilson and any Department of Interior officials in the Immediate Office of the Secretary, Office of the Deputy Secretary, Office of Congressional & Legislative Affairs, Office of Intergovernmental and External Affairs, Office of Communications, Office of the Solicitor, Office of Assistant Secretary of Land and Minerals Management or Office of Policy, Management and Budget, related to the relocation of the headquarters of the Bureau of Land Management to Grand Junction, sent since June 1, 2018.” Plaintiff also sought a fee waiver.

26. BLM responded to the request by email on August 1, 2019 (see Exhibit 7). The email stated that BLM would place the request on a “complex” track and would prioritize the request, and that the fee waiver request would be processed.

27. As of the date of the filing of this Complaint, plaintiff has received no further communications from BLM concerning this request.

### **The Request to OMB**

28. On August 1, 2019, plaintiff submitted by email a FOIA request to the OMB (attached hereto as Exhibit 8) seeking “copies of all correspondence between any officials in the immediate office of Office of Management and Budget Director Mick Mulvaney (including Director Mulvaney), and any Department of Interior officials in the Bureau of Land Management, Immediate Office of the Secretary, Office of the Deputy Secretary, Office of Congressional & Legislative Affairs, Office of Intergovernmental and External Affairs, Office of Communications, Office of the Solicitor, Office of Assistant Secretary of Land and Minerals Management or Office of Policy, Management and Budget, related to the relocation of the headquarters of the Bureau of Land Management to Grand Junction, sent since June 1, 2018.”

29. Plaintiff also sought a few waiver for this request.

30. OMB acknowledged receipt of the request on August 2, 2019 (see Exhibit 9, attached hereto), saying that the request had been logged in and is being processed.

31. As of the date of the filing of this Complaint, plaintiff has received no further communications from OMB concerning this request.

### **The Requests to GSA**

32. On August 1, 2019, plaintiff submitted via FOIA Online two FOIA requests to the GSA seeking correspondence and communications relating to the BLM relocation. Specifically, plaintiff submitted:

- a. A request (attached hereto as Exhibit 10) seeking “a copy of a list or spreadsheet showing all buildings or office spaces that the General Services Administration has leased or owned in Grand Junction, Colorado as of July 2019. To be clear, I



am only requesting one document, and if there are multiple copies of the same document, request the document produced closest to July 16, 2019.”

- b. A request (attached hereto as Exhibit 11) seeking “copies of all correspondence between any officials in the Rocky Mountain Region 8 region of the General Services Administration and any Department of Interior officials working in the Bureau of Land Management, Immediate Office of the Secretary, Office of the Deputy Secretary, Office of Congressional & Legislative Affairs, Office of Intergovernmental and External Affairs, Office of Communications, Office of the Solicitor, Office of Assistant Secretary of Land and Minerals Management or Office of Policy, Management and Budget, related to the relocation of the Bureau of Land Management headquarters, sent since June 1, 2018.”
33. Plaintiff sought a fee waiver in each of these requests as well.
34. Because problems with GSA’s online FOIA platform prevented plaintiff’s requests from being processed, plaintiff (after discussing the problems on the phone with a GSA employee), emailed these two requests to GSA on August 7, 2019. A copy of plaintiff’s email is attached hereto as Exhibit 12.
35. As of the date of the filing of this Complaint, plaintiff has received no further communications from GSA concerning either of these requests.

## **PLAINTIFF'S CLAIMS FOR RELIEF**

### **COUNT ONE**

#### **(Failure to Conduct an Adequate Search)**

1. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

2. Plaintiff submitted requests that reasonably described the records sought and were made in accordance with each defendant's published rules.

3. In response, defendants have failed to conduct a search reasonably calculated to uncover all responsive agency records.

4. Therefore, defendants have violated the FOIA's mandate to search for responsive records. 5 U.S.C. § 552(a)(3)(C).

5. Plaintiff is entitled to injunctive and declaratory relief with respect to the search for the requested records.

### **COUNT TWO**

#### **(Failure to Produce Records Under the FOIA)**

6. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

7. Plaintiff properly asked for records within defendants' control.

8. Plaintiff is entitled by law access to the records requested under the FOIA, unless defendants make an explicit and justified statutory exemption claim.

9. Defendants have not produced all the records responsive to plaintiff's FOIA requests.

10. Therefore, defendants have violated the FOIA's mandate to release agency records to the public by failing to release the records as plaintiff specifically requested. 5 U.S.C. §§ 552(a)(3)(A).

### **COUNT THREE**

#### **(Failure to Provide Fee Waivers)**

11. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

12. Plaintiff properly asked for a public interest fee waiver in each of its requests.

13. Plaintiff is entitled by law to receive a public interest fee waiver. Western Values Project is a nonprofit organization dedicated to informing the public regarding issues of public concern. The issue of the relocation of BLM employees is a matter of significant public concern, having generated media attention as well as the attention of Members of Congress. Plaintiff has no commercial interest in the information and will use it solely to inform the public.

14. Defendants have not granted public interest fee waivers to plaintiff.

15. Therefore, defendant has violated the FOIA's mandate to grant fee waivers when the requests are made in the public interest. 5 U.S.C. §§ 552(a)(4)(A)(iii) and 43 CFR § 2.45.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff respectfully requests that this Court:

1. Declare that defendants have violated the FOIA and agency regulations by failing to conduct an adequate search for records responsive to plaintiff's FOIA requests;
2. Order the defendants to immediately conduct and document an adequate search for responsive records as dictated by plaintiff's requests;
3. Declare that the defendants have violated the FOIA by failing to lawfully satisfy plaintiff's FOIA requests;
4. Order the defendants to release all records responsive to plaintiff's FOIA requests;
5. Order the defendants to grant a public interest fee waiver for all records responsive to plaintiff's requests;
6. Award plaintiff its reasonable attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
7. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: /s/ Jonathan Massey

Jonathan Massey  
MASSEY & GAIL LLP  
1000 Maine Ave. SW  
Suite 450  
Washington, DC 20024  
Direct: (202) 650-5452  
Fax: (312) 379-0467  
[jmassey@masseygail.com](mailto:jmassey@masseygail.com)

Attorney for Plaintiff